

MR. SCHIRAG: In this section and the next, I notice the word "Executive." I assume the committee means Governor.

MR. CROFT: We changed -- as soon as we are through drafting it, we will change those things.

CHAIRMAN BALDWIN: Are there other questions before we vote the adoption of this section?

Delegate Garner and Delegate Rothschild.

MR. GARNER: I would appreciate it if the committee would clarify for me how this comprehensive plan is going to be developed with focus on neighborhoods and have a statewide advisory commission.

MR. CROFT: I would like to --

MR. JACKSON: Out of order.

CHAIRMAN BALDWIN: It is out of order, as Delegate Jackson says. We are dealing strictly with citizen advisory planning commissions.

MR. GARNER: I am asking about citizen advisory commission.

MR. JACKSON: Out of order, Mr. Chairman.

CHAIRMAN BALDWIN: The Chair has ruled that your question is out of order, sir.

MR. GARNER: Can I ask a question about the citizen advisory commission?

CHAIRMAN BALDWIN: Yes, you may.

MR. GARNER: Can you tell me how a citizens advisory commission is going to develop a plan with a focus on neighborhoods?

MR. JACKSON: That is out of order, Mr. Chairman.

MR. GARNER: That is a legitimate question, Mr. Chairman.

MR. JACKSON: Mr. Chairman, the question was asked and answered this morning.

CHAIRMAN BALDWIN: I concur with Delegate Jackson. Delegate Rothschild.

MR. ROTHSCHILD: I would like to speak to Section 3, for this reason: Although I am in favor of a comprehensive development plan, I really think that land use should be a subsection under a comprehensive development plan, instead of the main charge for the commission. The title of the commission is Citizens Advisory Planning Commission, but I think such a commission, rather than focusing on just land use should speak to tax structure, housing, jobs, et cetera, et cetera. I don't think it is enough to just have it in the report of the committee. I think the actual language designing that commission should speak to the total comprehensive view of the commission.

CHAIRMAN BALDWIN: Those in favor of adopting Section 3 as amended, signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Opposed, "nay."

(A chorus of "no.")

CHAIRMAN BALDWIN: A division, a show of hands for the "yes."

(A show of hands.)

MR. BRUNING: 15.

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

MR. BRUNING: 10.

CHAIRMAN BALDWIN: Abstentions?

(No response)

CHAIRMAN BALDWIN: Section 3 has been adopted as amended.

Section 4.

MR. CROFT: I would like to move for the adoption of Section 4, Adoption of the Comprehensive Plan, with the following amendments, perfecting language approved by the committee: At line 12, strike "the" and put in "a", and also add on line 13 the following phrase, "The comprehensive plan shall be the framework for the policies of all state

agencies and commissions."

MR. : Repeat it, please.

MR. CROFT: Yes. Strike out on line 12 "the" and replace it with "a." It should read, "shall adopt and transmit a comprehensive plan to the Executive." And add the following sentence, "The comprehensive plan shall be made the framework for the policies of all state agencies and commissions."

MR. : I second it.

CHAIRMAN BALDWIN: You have heard the Section 4 from the committee as amended. There is a minority report, the Corn minority report. Will the Secretary read it?

MR. BRUNING: Section 4, line 13, add the word "revised" before the word "comprehensive." Section 4 shall not read "Within a time period fixed by law, the Legislature, after receipt of the proposed comprehensive plan and public hearings, shall adopt and transmit the revised comprehensive plan to the Executive."

CHAIRMAN BALDWIN: Is there a second to the Corn amendment? Is there a second to the Corn amendment?

(No response)

CHAIRMAN BALDWIN: Having heard none, the amendment has been rejected.

Is there another one?

MR. BRUNING: From Delegate Charles Mason, in line 12, after the word "shall" strike the remainder of the sentence and substitute the following, "consider it, make any changes which the Legislature considers necessary and upon adoption transmit the approved plan to the Executive."

MR. : Would you repeat it?

MR. BRUNING: Yes. In line 12, after the word "shall" strike the remainder of the sentence and substitute the following, "consider it, make any changes which the Legislature considers necessary and upon adoption transmit the approved plan to the Executive."

CHAIRMAN BALDWIN: Is there a second?

MR. : I second it.

CHAIRMAN BALDWIN: The Charles Mason amendment has been seconded. Discussion?

MR. MASON: I think mine is much clearer than what was there originally. Now, after I wrote out my amendment, the committee made a change in the printed language which does help somewhat. It makes my amendment perhaps less necessary, although I think this would be still clearer. I would like to get the opinion of the committee or the Chair on whether this clears it up. As it was originally printed,

it almost looked as if the Legislature was supposed to rubber-stamp the thing, approve it just as it was. Now, changing the "the" to "a" helps a lot.

MR. CROFT: We had heard that from other people and that wasn't what we had wanted to happen and we were told that a way to say what we wanted to happen was with the word "a" rather than the word "the." We are saying the same thing.

MR. MASON: Do you think that my language is any clearer than what you have done by adding the "a"?

MR. CROFT: I think yours is more explicit, but I think that we are saying the same thing. I think we are saying exactly the same thing.

MR. MASON: I will say that if you had made yours before I wrote mine, I probably wouldn't have bothered to write it. But the fact of the matter is I did and I think it is a little more explicit, so I would move my amendment.

CHAIRMAN BALDWIN: Is there further discussion on the Mason amendment?

Would you read it once more, Mr. Secretary.

MR. BRUNING: Following the word "shall" strike the remainder of the sentence and substitute the following, "consider it, make any changes which the Legislature considers necessary and upon adoption transmit the approved plan

to the Executive."

CHAIRMAN BALDWIN: Is there further discussion?
Can we now by unanimous consensus terminate debate?

Those in favor of the Mason amendment, signify by
a show of hands.

(A show of hands.)

MR. BRUNING: 15.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: One.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: One.

CHAIRMAN BALDWIN: The Mason amendment has been
adopted.

MR. CROFT: I am told there is another amendment.

CHAIRMAN BALDWIN: Do you have an amendment on
Section 4?

MR. OULAHAN: No, sir, mine is on Section 6.

CHAIRMAN BALDWIN: Okay. Delegate Love and Delegate
Garner.

MR. LOVE: I have a question of the Chair. We have
I guess perfecting language that came from our counsel and
it says "The plan shall guide the action of" and your

proposed language is "The plan shall provide the framework for." It is probably very similar except somehow "guide the action of" sounds very unambiguous and "provides the framework for" says to me you might be able to weasel out of it, but I would just like your opinion on it.

MR. CROFT: I guess I do agree that the terms are similar and it may be a semantic difference. If I had had the language of the general counsel before we had made our changes ourselves, we would have probably chosen his language. I just received the general counsel's statement about fifteen minutes before we began this session.

CHAIRMAN BALDWIN: So, Mr. Croft, if you see that as no substantive change in your report, you may just --

MR. CROFT: We will accept that -- I am not sure how we do this technically but, yes, we will accept that language..

CHAIRMAN BALDWIN: Now we have adopted a section or part of Section 4, Mr. Croft, will you read what is remaining, how the section will now read?

MR. CROFT: Okay. I don't have --

CHAIRMAN BALDWIN: I understand another amendment is being brought forth. Delegate Rothschild?

MR. ROTHSCHILD: Right. At the end of the section,

on Adoption of Comprehensive Plan, include the following sentence, "The plan shall include total comprehensive development, including economic, social, cultural, housing, health care, population growth, land use and other aspects of long-range state development."

CHAIRMAN BALDWIN: Where would one place that?

MR. ROTHSCHILD: At the end of that section.

CHAIRMAN BALDWIN: At the end of the section?

MR. ROTHSCHILD: Section 4, the last sentence.

MR. BARNES: I think Delegate Rothschild's point is a good one, but I think there are other sections of our document.

MR. SCHRAG: A point of order. Did it receive a second?

CHAIRMAN BALDWIN: It did not receive a second.
Delegate Croft, you may proceed with your motion.

MR. CROFT: I need a copy of the amendment that was passed. I need to see the exact language. If I am going to read it, I need the exact language of the Mason amendment.

Section 4 now reads, "Within a time period fixed by law, the Legislature, after receipt of the proposed comprehensive plan and public hearings, shall consider it, make

any changes which the Legislature considers necessary, and upon adoption transmits the approved plan to the Executive." Then after that, then it continues to read, "The comprehensive plan shall guide the actions of all state agencies and commissions."

CHAIRMAN BALDWIN: As many as are in favor of adopting Section --

MR. GARNER: Mr. Chairman.

CHAIRMAN BALDWIN: Yes, Delegate Garner?

(3-A)

MR. GARNER: I believe we have not discussed this amendment.

CHAIRMAN BALDWIN: You may speak to it.

GARNER: I was trying to shorten it. It is somewhat repetitious, but this language is no stronger than the Home Rule Charter which has not produced a comprehensive plan and neither will this language. It is very weak and it will not produce what we want.

CHAIRMAN BALDWIN: Delegate Long, Delegate Schrag.

MR. LONG: This section, as the two preceding ones, is essentially legislation clandestinely done because legislation in this area requires the most careful consideration and a large amount of detail, so we are doing not half a job, about a quarter of the job, about ten percent of the

— job which is just going to tie the legislature in knots when it tries to actually put into effect a real planning legislation.

MR. CROFT: May I speak to that?

CHAIRMAN BALDWIN: Yes, you may.

MR. CROFT: First of all, it seems that Delegate Long has found the magic formula to determine the difference between constitutional language and legislation, and it is an intetesting magical formula. If it is something that is said in what he considers to be constitutional language which was general in brief, it is not clear enough or precise enough. If it is said in language that is very detailed then he terms it legislation.

Let me make a point. What this article simply says is this: This article simply states that the legislature shall adopt a comprehensive plan. There is nothing magical about legislators adopting comprehensive plans. They do it in state after state, city councils do it in city after city. Adopting a comprehensive land use plan is no more difficult than adopting the budget for the state, adopting a state budget, and most state constitutions have a very simple statement about "at a time fixed, the legislature shall adopt the budget." It is an erroneous argument.

CHAIRMAN BALDWIN: Delegate Schlug and Delegate Maurice Jackson.

MR. SCHRUG: Delegate Croft, I was quite comfortable with this section until a minute or so ago, while it read that "The comprehensive plan shall be the framework for the policies of the state agencies and commissions," I thought that gave the agencies and commissions enough leeway so that, for example, it was in the best interests of all that a variance from this plan should be made because a neighborhood, a particular neighborhood came in and objected to a proposed decision of a commission that was in accordance with the plan, they might do that. But now I wonder whether we haven't created doubt about that, when we say "guide the actions of," it sounds almost as if the state agencies and commissions are bound by the comprehensive plan and can't vary them in the interest of a neighborhood or a group of some other interest in the body politic which may occasion a need for variance in a state plan. Is my concern valid or --

MR. CROFT: Again, if I remember correctly, when I was asked by those who know about that language, I had stated, number one, that I saw the difference between "the plan shall guide the action for state agencies" as being a semantic difference, as being semantically different from

such framework. In other words, it is not our intent to mean that state gencies and commissions cannot deviate. We are talking about "guide" rather than "directly control," and it is our position that there is only a semantic difference between framework and guide.

MR. SCHRUG: If that is the case, if you think there is no significant difference between the two, would you be willing to go back to the other language? If not, I would suggest, Mr. Chairman, that you take thirty seconds and just check with your committee, because I think that the other language is preferable, it does give the agencies and commissions a little more of a chance to make exceptions for neighborhoods or other interests in the city that might have interests at odds with this plan.

CHAIRMAN BALDWIN: Delegate Jackson?

MR. JACKSON: No.

CHAIRMAN BALDWIN: Delegate Love?

MR. LOVE: I would like to speak in support of this, whichever language we use. We have had several examples of developers who have come into our neighborhood with what we consider an outrageous building proposal, including a nine-story building which would go next to 17 two-story row houses, all owned by blacks and Hispanics. When we said to

the city this is incomprehensible to us, we had even proposed a plan a year before which the city would not hear, the city said to us, well, we have no comprehensive plan for your neighborhood, therefore what takes precedence is the present zoning and because there were some buildings on 16th Street that were 90-feet high, they moved into the middle of Kalorama, across from the roller skating rink and put a 90-foot high building there.

The fact is that the comprehensive plans do not normally hurt neighborhoods, they help the neighborhoods because as we have in Section 3, people could have input into this plan and neighborhoods are protected. The plans protect neighborhoods. The developers who want to go into spot areas in neighborhoods, as they tried to do at Dupont Circle, Adams Morgan and Georgetown and everywhere, so the plan is what is protecting the neighborhood, not the opposite, as Mr. Schrag has suggested.

CHAIRMAN BALDWIN: Delegate Croft, do you want to respond to Delegate Schrag now?

MR. CROFT: I will ask the general counsel to give us his reasons for why he thinks the phrase "plan shall guide the actions of the agencies" --

CHAIRMAN BALDWIN: How did we get back to that?

MR. CROFT: That is what the ---

CHAIRMAN BALDWIN: Is that still part of 4?

MR. CROFT: That is still part of 4, yes. It is the use of the word "guide."

CHAIRMAN BALDWIN: Okay.

MR. THOMAS: I got this language from the committee's report. The committee stated what its intent of the plan was, so I just thought it would be better if it were more desirable, if it were expressly stated in Section 2. Whether you use framework or guide, I don't think makes that much difference. I do think "guide" is less ambiguous and I think it is easier, as easy to get out of framework as it is a guide. A guide is merely a guide and a framework is merely a framework, for whatever the intentions of the delegates are, I don't think would affect one way or the other.

CHAIRMAN BALDWIN: Delegate Brian Moore, Robinson and Cooper.

MR. B. MOORE: It is not clear to me how many constitutions have wording in reference to adoption of a comprehensive plan.

MR. CROFT: Most constitutions usually begin with --- most states are not city states, and in most constitutions when they address the question of land use planning give

the authority to their lower units of government, to their local units of government.

MR. B. MOORE: So there are minimal --

MR. CROFT: Well, again, I want to make a distinction. We are not developing a constitution for a mythical state. We are developing a constitution for this state, which is urban in character. In other words, we are trying to draft a constitution for a city-state, for a city-state in which one of the most important politics are those around land, and the folks in the neighborhoods have not been winning the politics.

CHAIRMAN BALDWIN: Delegate Samuel Robinson.

MR. ROBINSON: I should like to know, first of all, are these people going to be paid, the members of this commission?

MR. CROFT: That was adopted in the other -- that was adopted in the other section --

MR. COOPER : Mr. Chairman, you ruled earlier on Mr. Garner and you informed the body that the question and answer period ended this morning. Is that not a fact?

CHAIRMAN BALDWIN: Yes.

MR. COOPER : But I hear more questions

coming.

CHAIRMAN BALDWIN: They may ask questions, Delegate Cooper, if it is going to assist them in their voting.

MR. COOPER: I think Mr. Garner's question would have assisted him but you ruled him out of order and sat him down.

CHAIRMAN BALDWIN: That wasn't for the same reason. You misinterpreted the --

MR. JACKSON: May we have order, please?

CHAIRMAN BALDWIN: -- you misinterpreted the Chair, Delegate Cooper.

Delegate Robinson, you still have the floor.

MR. ROBINSON: What will the legislature -- with what you are proposing here, aren't you usurping from the legislature, in their duties?

MR. CROFT: Excuse me, we have already adopted Section 3, which talks of a Citizens Advisory Planning Commission. We are now on the adoption of the Adoption of the Comprehensive Plan, which is what the legislature does and that is the final body which makes the final decisions.

CHAIRMAN BALDWIN: Delegate Cooper?

MR. COOPER: I would like to rise and speak against the adoption of Section 4. As Delegate Love pointed out,

the neighborhoods would fare better with the comprehensive plan simply because it is drawn up by the citizens advisory planning commission. However, through the process of adoption, the legislation can and probably will amend that plan north, south, east and west, and change that plan to fit their own political needs, such that by the time it is adopted and implemented by the legislature, it would not look anything like the plan that was originally submitted to them so, no, the plan -- I think the section has no teeth because the plan would in effect never reflect the reality of the neighborhood.

CHAIRMAN BALDWIN: Delegate Jordan and Delegate Holmes.

MR. JORDAN: Mr. Chairman, if I could suggest two points, that is, I understood that any legislation that came from the state legislature, any actions of the state legislature would have to be held for 90 days before it became adopted, and that would allow an opportunity for a referendum, so would this be subject to a review process, and is fo what?

MR. CROFT: It would be subject to whatever review processes have already been adopted by the section.

CHAIRMAN BALDWIN: Delegate Barnes?

MR. BARNES: I move the previous question.

CHAIRMAN BALDWIN: No, there is a hand up. Delegate Holmes.

MS. HOLMES: I would just move the question.

CHAIRMAN BALDWIN: The question has been called for. Can we by general consensus terminate debate?

Those in favor of Section 4 as amended, signify by a show of hands.

(A show of hands)

MR. BRUNING: 20.

CHAIRMAN BALDWIN: Those who oppose?

(A show of hands)

MR. BRUNING: 4

CHAIRMAN BALDWIN: Abstentions?

(A show of hands)

MR. BRUNING: Two.

CHAIRMAN BALDWIN: Section 4 has been adopted. Section 5, Zoning.

MR. JACKSON: Point of information.

CHAIRMAN BALDWIN: Yes.

MR. JACKSON: How long are we going to go tonight?

CHAIRMAN BALDWIN: We haven't checked. We will check with the elevator operator soon.

MR. CROFT: Mr. Chairman, with the following perfecting language approved by the majority of the committee, I would like to move the adoption of Section 5 - Zoning, which I will read, "To protect the public health and welfare, secure the public safety and to protect property in the state, the Legislature shall establish a Zoning Commission."

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 5. Is there a minority report?

MR. CROFT: No.

CHAIRMAN BALDWIN: There is not one as part of the born report?

MR. CROFT: No.

CHAIRMAN BALDWIN: Are there amendments?

MR. JORDAN: May we hear the perfecting language?

MR. CROFT: Yes, it would read this way, "To protect the public health and welfare, secure the public safety and to protect property in the state, the Legislature shall establish a Zoning Commission." The purpose of using the word "welfare" is to broaden the purpose of the commission in order to make it clear that it can act for purposes other than health, safety and property.

CHAIRMAN BALDWIN: Discussion? Delegate Garner?

Talmadge Moore?

MR. GARNER: I must, Mr. Chairman, point out once again with emphasis this time, look here, we have a Trojan horse. Sure, the executive is supposed to prepare a plan; sure, there is supposed to be an advisory committee, and, sure, the legislature is supposed to adopt it, but lo and behold the zoning commission got the power. They will decide everything. That is where it is in this language, that is the way it is under the Home Rule Charter, and guess who gets served? They are not here, they are in the Board of Trade.

MR. CROFT: I would like to respond to that. The response to that is simply this. It is very short and simple. In the article that we adopted, it is explicitly stated that the comprehensive plan provides the guide. You know, it is the comprehensive plan and it is stated there explicitly, and Delegate -- those who notice, this committee has certainly been charged with being friends of certain interest groups, but we have never been charged with being friends of interests for capital. We have been accused of being friends of interests of working folks, poor folks -- no, those folks are never of capital.

CHAIRMAN BALDWIN: Delegate Croft, I think has

pointed out, and I think he is frankly right, he has made that same point five times and it isn't necessary for you to respond every time he makes the same point.

Delegate Talmadge Moore.

MR. T. MOORE: Mr. Chairman, is this going to be a part of the comprehensive plan? The reason I ask is because I think this is one of the most important items and they have so much power and if it is going to be included in the comprehensive plan, they might have duties and functions specifically for the --

MR. CROFT: Again, what we have merely done in this section is authorize establishment of the Zoning Commission. What we have done in the previous section is say that all agencies and commissions, the plan shall guide the action of all state agencies and commissions, the Zoning Commission will be guided by -- be guided by the comprehensive plan. This Section 5 merely authorizes the establishment of the Zoning Commission.

CHAIRMAN BALDWIN: Delegate Love.

MR. LOVE: As I read this, this is -- until he added welfare directly from the Home Rule Act, so it does not sound so unusual. This time I have to rise in support of Mr. Garner, however. The Zoning Commission is the nemesis

of Adams Morgan, is all I can say, and here it is again -- even in the Home Rule Act, at least we had some description of who was going to be appointed, who was going to appoint them. Are you people sure that they are not going to have the same kind of Zoning Commission that we have now?

CHAIRMAN BALDWIN: Delegate Jordan?

MR. JORDAN: No.

CHAIRMAN BALDWIN: Are there further statements on Section 5? Delegate Nahikian?

MS. NAHIKIAN: I would like to add a sentence on line 2, page 3, "The Zoning Commission shall be required to consult with neighborhood" -- excuse me, Mr. Chairman -- "The Zoning Commission shall be required to consult with neighborhood, community and/or other local government units in making decisions on cases."

I will read it again: "The Zoning Commission shall be required to consult with neighborhoods, communities or local government organizations in making decisions on cases."

"The Zoning Commission shall be required" -- actually, you can leave out "required" -- "shall conslut with neighborhoods, communities or local government organizations in making decisions on cases."

CHAIRMAN BALDWIN: Discussion? Delegate Jordan,

— Delegate Eichhorn?

CHAIRMAN BALDWIN: It was seconded by Delegate Barnes.

MS. NAHIKIAN: I would like to speak to it.

CHAIRMAN BALDWIN: You may speak.

MS. NAHIKIAN: One of the issues that is probably the most critical and I think neighborhood and local government organizations feel the most strongly about are zoning commission decisions that are made contrary to the wishes of a local community.

In the local government article, we spent some time working very hard to understand that there is also a contradiction because neighborhood groups, if they have the ultimate power to zone, may well find -- the state may well find itself in a position that certain neighborhoods or certain areas of the city would pass zoning laws that would not allow for the placement of a number of needed state facilities, like half-way houses.

Consequently, the local government article recommends that the local government units not be given the power to zone. The problem is there needs to be a balance on the other side, and that is the reason for proposing this additional language, so that the constitutional requirement is

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there, that the zoning commission shall consult with neighborhood, community and local government organizations in making decisions on cases. It requires the zoning commission to actually consult with and have a dialog and hear what local groups have to say and hopefully would prevent the kind of regulations that our current Zoning Commission has recommended that would severely restrict the input from local neighborhood groups regarding zoning decisions in their cases.

I would urge your support of this amendment. Thank you.

CHAIRMAN BALDWIN: Delegate Eichhorn, and -- Delegate Jordan first. Then Eichhorn and Oulahan.

MR. JORDAN: Mr. Chairman, I don't where this will appreciably increase the involvement of citizens in the processes of the Zoning Commission over the one that we already have in the comprehensive plan, that says the comprehensive plan shall be made the framework for all agencies and commissions.

The second thing is that all we are asking is that the commission will consult with these various groups. That is to say we don't give any added weight to them. So I am just saying that I don't see how this will improve upon the

language that we already have. The zoning commission probably will consider citizen input anyway in this process and how will this provided the additional emphasis that you are looking for.

MS. NAHIKIAN: Let me just respond briefly, Mr. Chairman.

CHAIRMAN BALDWIN: Yes, if you will please be brief.

MS. NAHIKIAN: I will be brief. I somewhat have a problem with the word "consult." I don't know what other word to use unless we actually use the language "give great weight to the opinions of." But I proposed the word "consult" for lack of a better word at that point.

Secondly, I think that the important thing that we need to point out is that Section 4, concerning adoption of the comprehensive plan does not address how the zoning commission would operate in the interim, and my point is to make it clear that the zoning commission in the absence of a comprehensive plan -- you know, when we got home rule, they said we had to have a comprehensive plan, which we still don't have -- that in the absence of a comprehensive plan we will have some framework that directs the zoning commission.

CHAIRMAN BALDWIN: Delegate Eichhorn and Oulahan.

MS. EICHHORN: I am opposed to this amendment. I

think it is superfluous. The local government section provides for the continuation of an advisory neighborhood structure. Originally the committee was given all the powers that they now contain, that means that the zoning commission must give great weight to their needs. The zoning commission does have that and it is mandated by legislation. In debating zoning requirements for a community based residential facility, it took them over three years to go through the several variations of plans, while the community concerned made suggestions. I think that purpose is built in and to place this language here is so burdensome as to occasion open hearings and unnecessary and not needed.

CHAIRMAN BALDWIN: Delegate Oulahan and Delegate Hilda Mason.

MR. OULAHAN: Mr. Chairman, I speak in opposition to the motion. This is another example of legislation going into the constitution which is burdensome. In fact, what weight is given by agencies to a particular power interest is something for the legislature and to the agency's regulations.

Secondly, "to consult with" doesn't mean a thing. Even to give great weight, provisions of the Home Rule Act

have been emasculated by the District of Columbia Court of Appeals.

CHAIRMAN BALDWIN: Delegate Mason.

MS. MASON: I do not wish to speak, Mr. Chairman.

Thank you.

CHAIRMAN BALDWIN: Delegate Thomas Moore has spoken. Delegate Blount?

MR. BLOUNT: I move the previous question.

CHAIRMAN BALDWIN: The previous question has been called for. Those in favor of terminating debate, indicate by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those opposed, "nay."

(No response)

CHAIRMAN BALDWIN: Abstension?

(No response)

CHAIRMAN BALDWIN: Those in favor of the Nahikian amendment, please signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Opposed, "no."

(A chorus of "no.")

CHAIRMAN BALDWIN: Abstension?

(No response)

CHAIRMAN BALDWIN: The Nahikian amendment is lost.

MR. CROFT: I move the adoption of Section 5,
Zoning, as amended.

MR. BARNES : I second it.

CHAIRMAN BALDWIN: It has been moved and properly
seconded that we adopt Section 5 as amended. Discussion?

(No response)

CHAIRMAN BALDWIN: Those in favor, signify by saying
"yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Opposed, "no."

(A chorus of "no.")

CHAIRMAN BALDWIN: I will ask for a division. Those
in favor, a show of hands.

(A show of hands.)

MR. BRUNING: 14.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: Two.

CHAIRMAN BALDWIN: The section is adopted.
Section 6.

MR. CROFT: Mr. Chairman, I move the adoption of Section 6, Public Land Acquisition.

MR. : I second it.

CHAIRMAN BALDWIN: Is there a minority report? Does the Corn minority report speak to Section 6?

MR. CROFT: No, it doesn't, but Delegate Oulahan has an amendment.

MR. OULAHAN: Mr. Chairman, I move that this section be stricken.

MR. : I second it.

MR. OULAHAN: I have a second, Mr. Chairman.

CHAIRMAN BALDWIN: It has been moved and properly seconded that Section 6 be stricken, public land acquisition. Discussion?

MR. OULAHAN: Mr. Chairman, I make this motion for several reasons. Number one, I don't understand what the language means here, "control future growth, development and land use within the state." Secondly, what you are doing is creating a monster whereby the state can go in anywhere it wants to and say I have a public purpose, I want to ensure future growth along certain lines, so therefore I am going to condemn property.

The buildings which stood and still stand on

property taken over by the Urban Renewal Agency and by the District of Columbia, where people were thrown out of their homes, offer a monument to that kind of what I call absolutely unnecessary power in the state. It can be misused. Can't you see the state acting just like city hall does now, getting together with certain developers and saying, now, we are going to give you this part of the city for future growth, okay, boys, the city will now move in and start condemning property, even if the property isn't built for five years, as has happened here.

CHAIRMAN BALDWIN: Does someone on your committee want to respond?

Delegate Hilda Mason?

MS. MASON: Mr. Chairman and members of the delegation, the article simply says "may," it doesn't say "shall," and I think the committee discussed it and thought that there was nothing wrong with having the state having the power to own some land to do whatever it wants to do with, like the convention center, which I voted against, by the way. But that was the thinking of the committee.

CHAIRMAN BALDWIN: Okay. We have heard the rationale for the committee. Delegate Cooper.

MR. COOPER: I would like to speak in favor of

Delegate Oulahan's amendment to strike this section because I think it is a very dangerous section. If you look at it in conjunction with sections that have already been adopted on eminent domain, I think that there is a snowball effect here and if we are not careful we are going to have a state that is under the control of the state.

If you look at the language, without any other prepositional phrases or qualifying phrases, it simply states -- and this is a fact -- that the state may control land use within the state. We have already given the state the ability to take one's land under eminent domain and simply provide just compensation. Now, what is just compensation, I don't know. It could be a nice kiss and hi, how do you do. But I think that there is a very dangerous thing going on here, and if you look at the rest of the articles, its thread is the same thing.

On their independent merits, these may look very simple and very harmless, but if you put them altogether, the sum of them is an extreme danger and I think it will be detrimental to the constitution and detrimental to the new state. So I urge you to strike this amendment, not vote it down, be stronger and strike it in its entirety.

CHAIRMAN BALDWIN: Delegate Coates.

MR. COATES: Thank you, Mr. Chairman. The opinion of the learned and widely respected Ralph C. Thomas, our General Counsel, indicates that with respect to Section 1, it is just the converse of the point made by Delegate Cooper, and that is that Section 1 imposes a rather strict and severe limitation on the taking of land. There must be firstly a compelling public interest and it must also meet the condition that this interest cannot be served by any other means.

So reading together Section 6 and Section 1, we have adequate safeguards on the abuse of that power and exercise by the state.

CHAIRMAN BALDWIN: Delegate Rothschild.

MR. ROTHSCCHILD: Not only are there adequate safeguards, I think between Sections 6 and 1 you would tie any of this up in court for so long that it would basically just provide jobs for lawyers, rather than complicate getting any economic development.

CHAIRMAN BALDWIN: Is there further discussion of this section, Section 6?

Delegate Nahikian.

MS. NAHIKIAN: Mr. President, I would just like to say that I think that the language in Section 6 as proposed

by the committee is simply boilerplate language that gives the state the power to make the decision about owning land and about use of land, which is the power that almost every government in this country has, and it's boilerplate language and I don't think it means anything other than giving them the basic right to have it.

CHAIRMAN BALDWIN: By consensus, may we terminate debate on the amendment?

Those in favor of adopting the Oulahan amendment. signify by a show of hands.

(A show of hands.)

MR. BRUNING: 13

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: Two.

CHAIRMAN BALDWIN: The amendment is rejected.

MS. EICHHORN: What was the vote?

CHAIRMAN BALDWIN: I'm sorry, I can't hear you.

MS. EICHHORN: What was the vote?

MR. BRUNING: 13 to 11.

CHAIRMAN BALDWIN: Delegate Croft.

(3-B)

MR. CROFT: I would like to move the adoption of the article entitled "Land Use" with all amendments.

CHAIRMAN BALDWIN: I think we need to adopt Section 6.

MR. CROFT: I'm sorry. I would like to move the adoption of Section 6, Public Land Acquisition.

MR. BRUNING: I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 6. Those in favor, a show of hands.

(A show of hands.)

MR. BRUNING: 13.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN BALDWIN: Abstain?

MR. BRUNING: Two.

CHAIRMAN BALDWIN: 13-11-2, the section is adopted.

The Chase will entertain a motion for the adoption of Article 1, Land Use, the whole article I am speaking of, Article 1, Land Use.

MR. CROFT: Mr. Chairman, I move the adoption of Article 1, Land Use.

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Article 1, Land Use. Those in favor, signify by a show of hands.

Just one second. Delegate Long would like to speak to that.

MR. LONG: This article, as I said before, is a piece of legislation and I think it is based on the frustrations which all of us have encountered in dealing with land use planning and zoning in the District of Columbia. Out of that frustration is an attempt to force through something which we all want very much by way of a constitution which we are then going to ask the population to adopt along with a lot of other things.

But our focus cannot be on gaining an objective like land use planning. If our range of focus is that short, we are going to fail because our overriding purpose here is statehood for the District of Columbia. Anything which encumbers that with short-run gains is a self-defeating effort and I ask you to vote down the whole article.

CHAIRMAN BALDWIN: Is there further discussion? Delegate Rothschild.

MR. ROTHSCCHILD: Yes, I think this article as

written is more a result of history than of the future. I think if we are going to go for planning, we should have gone for the big picture, we should have gone for the big planning. I think we are really missing the target by doing this and we are just wasting our energy on a commission that could have been designed better.

Thank you.

CHAIRMAN BALDWIN: Those in favor of adopting Article 1, Land Use, signify by a show of hands.

(A show of hands.)

MR. BRUNING: 15.

CHAIRMAN BALDWIN: Opposed?

(A show of hands.)

MR. BRUNING: 10.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: Two.

CHAIRMAN BALDWIN: Article 1 is adopted.

The second article, Health and the Environment.

MR. CROFT: To prevent confusion of this article with articles written by the Health Committee, we would like to strike the title "Health" and the title should be "The Environment."

CHAIRMAN BALDWIN: I'm sorry, I didn't hear you.

MR. CROFT: We would like to strike from the title "Health and" and the article will be entitled "The Environment."

CHAIRMAN BALDWIN: Okay. You may proceed.

MR. CROFT: Mr. Chairman, I would like to move the adoption of Section 1, Public Policy.

MR. : I second.

CHAIRMAN BALDWIN: Is there a minority report, Mr. Chairman?

MR. CROFT: Yes, there is.

CHAIRMAN BALDWIN: I am speaking of the Corn amendment.

MR. CROFT: Yes, the Corn amendment does.

CHAIRMAN BALDWIN: Will you read the Corn amendments.

MR. CROFT: The Corn amendment says, beginning at line 7, 8, 9, 10, 11, omit everything on line 7 and thereafter starting with the semicolon after the word "water" and the section shall read, "Preventing pollution or degradation of the air, land, and water."

CHAIRMAN BALDWIN: Is there a second to the Corn amendment? Is there a second to the Corn amendment.

(No response)

CHAIRMAN BALDWIN: The Corn amendment has been rejected for lack of a second.

Are there other amendments?

MR. CROFT: Yes, there are. Delegate Cooper, Love, Oulahan.

MR. COOPER: Mr. Chairman, I move that in Section 1, newly entitled "The Environment," a period be placed on line 3 preceding the word "by" and that the rest of the section be stricken.

MS. EICHHORN: I second.

MR. CROFT: Would you repeat that?

MR. COOPER: Insert a period in line 3 preceding the word "by" and the rest of the section shall be stricken.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we place a period in line 3 before "by" and delete lines 4 through 12.

Discussion?

MR. COOPER: May I speak to it?

CHAIRMAN BALDWIN: Yes, you may.

MR. COOPER: Briefly, once again, I think that we are attempting to legislate through this section of the article. I don't think it is necessary to direct the legislature on just what constitutes the environment and what

needs to be protected. Just as we have the knowledge to write it in here, I think that the legislators that will be elected have that same knowledge and it won't be overlooked, and I think we are entering into a dangerous precedent when we start putting laundering lists into our constitution because inevitably something gets left out.

CHAIRMAN BALDWIN: Discussion?

MR. MARCUS: I would like to respond at the end of the discussion.

CHAIRMAN BALDWIN: Surely. Delegate Robinson.

MR. ROBINSON: I also speak in opposition to this. I want to speak in support of Delegate Cooper's amendment to strike from line 3 after "by" to the end of the section. I believe that this part of this particular section is covered by the Committee on Health, Housing and Social Services. I also agree with him that what is written here is legislation and a constitution is no place for legislation.

CHAIRMAN BALDWIN: Is there further discussion?
Delegate Eichhorn.

MS. EICHHORN: I am supporting the amendment but I really see no need for this article at all. They are very long statements, they serve no purpose, they belong in legislation. Some of them I think are a danger. In Section

1, I think the government is responsible for preventing pollution or degradation of the air, land or water. I am not sure what kind of legal liability that places on the state. I work for a Senator who is known as the environmental Senator, and I am very supportive of these goals, but the issues that are involved with eliminating pollution of all kinds is very complicated, is very costly and I think that by leaving this language in it would pose a real danger in terms of liability and I support this amendment in deleting it.

CHAIRMAN BALDWIN: Is there further discussion?
Delegates Love and Jackson.

MR. LOVE: Mr. Chairman, it appears to me that this amendment is much more appropriate after we have gone through the section than before. Second of all, I would like to point out that we are not talking about things like the air we breath. Anybody who has been here in August sees how bad the air is. And to say that we don't need to mention these things specifically to me sounds very crazy.

If you are talking about quality of life in the District, we all have to admit that the quality of life in the District is not particularly great now and I would like to see the new state be able to improve that quality. I think that is one reason why we are becoming a state.

CHAIRMAN BALDWIN: Delegate Jackson.

MR. JACKSON: Just briefly, the thing that seems to be to be apparent is not that anyone disagrees with anything, but they say it should be up to the legislature and that is a suitable way of doing it, I think. But to go right to the point, in Washington, D. C., most of the conditions of the people are mostly worse than anywhere in the nation. It is the worst in the nation.

Regardless of what one thinks and what one reads about the environment where we live, it seems to me that it becomes the necessity of the state to provide for that well-being and the state that does have that right to give that power to the legislature. It does nothing -- it takes nothing else and since it is stricken does not solve the problem. The problem is solved by giving the state the fundamental right to enhance and to provide for the health of its citizens, especially this city which has the worst health conditions of any state in this country.

CHAIRMAN BALDWIN: Delegate Marcus, you wanted to speak at the end end?

MR. MARCUS: Yes.

CHAIRMAN BALDWIN: Delegate Oulahan.

MR. OULAHAN: Mr. Chairman, I rise in support of

Mr. Cooper's amendment and because of the fact of the language hidden in the bottom of paragraph (b), which is "other threats to the public's right to health and enjoyment of its surroundings." Whenever in a constitution you start using the word "right" you are in effect creating a cause of action or at least encouraging litigation to enforce that right.

Nowhere in the constitutional provisions that I have seen or any other in this article is there any statement of the cost that it is going to be for this state to carry out and enforce these so-called rights. We will be bankrupt before we get through.

CHAIRMAN BALDWIN: Delegate Brian Moore.

MR. B. MOORE: Yes, the last five or six sections of this article, we have heard the arguments about constitutional wording versus legislation and I would like to seek advice from the counsel on what his understanding of the differences between constitutional writing and legislative writing.

MR. THOMAS: I think the way that this article is written right now, the guide for preventing pollution, degradation of air, land, and water will be decided by the courts, the way it is written now, because the challenges

will have to be in court. This section does not provide for any legislative direction and so the way we will know whether the state is preventing pollution or degradation of air, land and water is if someone brings the cause in court. So the courts will decide ultimately in my opinion what this section means.

MR. B. MOORE: So what you are saying is this is not legislation?

MR. THOMAS: No, it is not.

CHAIRMAN BALDWIN: Delegate Marcus.

MR. MARCUS: It is fascinating to me, it is fascinating to me that this body is willing to spend hours upon hours upon hours talking about the way the government is going to be structure, without talking about the way that the air that we breath is going to be -- the quality of the air that we breath, whether or not we are going to be exposed to hazardous waste, whether or not we are going to be exposed to toxic waste, whether or not our drinking water is going to be clean, and that this body isn't willing or may not be willing to protect those things as in fact a right. We are talking about our environment. If we don't have the environment, we don't have a state, we don't have any people, we don't have anybody here.

The fact is that it is not unusual for a state to talk about a right to a clean environment and talk about those things which are threats to that environment. Illinois does it, Hawaii does it, Alaska does it, many other states do it, explicitly in their constitution.

It is also fascinating to me that the issue of cost of protecting our environment comes up. Do we talk about the costs of the right to vote? Well, what is the right to vote if the environment exists that you can't exist in it, that people can't exist in that particular environment?

It is fascinating to me that when it comes to dealing with the issue of the quality of our lives, we are hesitant to say these things are threats to us. So I would speak against, very strongly against the amendment and urge the adoption of the entire article.

Thank you.

CHAIRMAN BALDWIN: Delegate Jones.

MS. JONES: I really hadn't planned to speak, but every time we debate something, somebody brings up some hysterical argument that disturbs me. You know, it costs much more to put people in hospitals, and when you get right down to it, the cost of human services is an awful lot of money in this city and I think the money ought to be spent

to make you comfortable. So I speak in support of the article and I hope people vote it up.

CHAIRMAN BALDWIN: You mean not the article, not the amendment.

MS. JONES: I mean the section. I am opposed to the amendment.

CHAIRMAN BALDWIN: Those in favor of the Cooper amendment, signify by raising your hands.

(A show of hands.)

MR. BRUNING: 15

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

MR. BRUNING: 12.

CHAIRMAN BALDWIN: Abstain?

(A show of hands.)

MR. BRUNING: Two.

CHAIRMAN BALDWIN: The amendment is adopted.
Delegate Croft.

MR. CROFT: Are there any further amendments?

CHAIRMAN BALDWIN: There are several other amendments.

MR. CROFT: Except I think some of these now will be moot.

CHAIRMAN BALDWIN: Delegate Love.

MR. LOVE: As I said, my amendment is not moot.
If this is going to be made as the argument --

MR. CROFT: It was to delete a section, not the article.

CHAIRMAN BALDWIN: Right. Delegate Jordan, you had an amendment.

MR. JORDAN: No, no.

CHAIRMAN BALDWIN: Do you have an amendment?

MR. JORDAN: Yes, sir. I would like to move, Mr. Chairman, that on line 1, the word "policy" precedes the word "of" be stricken and the word "responsibility" be inserted in lieu thereof. It says "It is the policy," I want to strike the word "policy" and insert the word "responsibility."

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we delete "policy" and insert "responsibility."

MR. OULAHAN: I would like to speak in opposition.

CHAIRMAN BALDWIN: Okay. Discussion? Delegate Oulahan.

MR. OULAHAN: Mr. Chairman, I rise in opposition.
I would like to point out that by the Cooper amendment we

have already adopted a policy which is contrary to my friend's amendment, and to use the word "responsibility" instead of "policy" again establishes the problem of the right because if the word "responsibility" is used, then the state is going to have to spend millions and millions of dollars assuring that we have the kind of climate here where no one gets hay fever and things like that because that is what the constitution says. I urge you to vote against it.

CHAIRMAN BALDWIN: Delegate Jones.

MS. JONES: I would like to again say we ought to talk a little less about the money. It is going to cost the state and the state is responsible for various things. It costs thousands and millions of dollars to bury people unnecessarily every year because they are not kept well and healthy and safe and we would not have to do that on that grand a scale. So I urge you to vote for the Jordan amendment.

CHAIRMAN BALDWIN: Is there further discussion on the Jordan amendment?

MR. BLOUNT: A point of information, Mr. Chairman.

CHAIRMAN BALDWIN: Yes, Delegate Blount.

MR. BLOUNT: Section 2 was stricken, is that correct, was deleted?

CHAIRMAN BALDWIN: Subsection (a) and (b) of Section 1.

MR. BLOUNT: Section 1.

CHAIRMAN BALDWIN: Yes.

MR. BLOUNT: Okay.

CHAIRMAN BALDWIN: Delegate Marcus, we will let you respond when we see that there are no other response from the floor. Delegate Marcus?

MR. MARCUS: I rise in support of the Jordan amendment. I think what the body has to understand is that the issue of environment is a very important issue. It is every bit as important as any other issue this body can consider. The body has voted by adopting the Cooper amendment, voted to gut, essentially gut the state's power to -- has voted to gut the state's power to deal with the whole environment.

What the Jordan amendment does is restore a piece of that. It is to provide that the state is able to protect the environment. To echo Delegate Jones, it in fact costs the state a great deal more each year to bury people who have been the victims of an abused environment than it will for the state in the long run to protect that environment and accept the responsibility for protecting the environment. If the state does not accept that responsibility, who is

going to? Who is going to?

Thank you.

CHAIRMAN BALDWIN: By consensus to terminate debate?

All in favor of the -- I'm sorry, Mr. Jordan wanted to speak last.

MR. JORDAN: Mr. Chairman, fellow delegates, I have heard a couple of arguments put forth this evening for taking actions one way or the other. What I have observed is that we move right or left as it serves our interests. So many of the arguments I have heard are fallacious, but I thought that it should be addressed.

I have heard one this evening say that we are attempting to legislate. A previous amendment clarified that issue. We are not legislating now. I have heard this evening we are talking about a question of money now, and I think that that is something that needs to be addressed.

My amendment is designed to clearly, as has been indicated, to provide something beyond a policy statement in terms of providing these protections to citizens. If the section remained as it was, without the amendment, the state need not do anything in order to ensure the citizens are environmentally protected, that the work sites are protected, and what have you.

Now, there has been a fallacious argument that has been put forward and I want you to understand this, when the issue of money was raised. That is a red herring. It is not necessarily going to cost the state any money. The state government itself won't necessarily have to pay. But what the state can do, as we have heard over and over and over again from those who oppose legislation through the constitution, is that the state can enact laws which carry out the intent of this section.

So all I am trying to do is to provide and make sure, certain that the state will in fact do that. So if we amend this section and make it the responsibility of the state to protect the quality of human environment, then the state can promote this effort through the enactment of laws and it need not cost taxpayers of the state a dime. It might cost business and industry some money, but I am saying there are costs associated with operating businesses and the citizens in this country I think in many instances have paid to clean up waste, to clean up the environment when a business has polluted it or destroyed it, and I don't think that we should continue to do that. So I hope that you will vote for this amendment.

Thank you.

CHAIRMAN BALDWIN: All those in favor of the Jordan amendment, signify by a show of hands.

MR. BLOUNT: What is the question?

CHAIRMAN BALDWIN: We are voting. Those in favor of the Jordan amendment.

(A show of hands.)

MR. BRUNING: 23.

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

MR. MARCUS: A point of order, Mr. Chairman.
Delegate Oulahan has voted twice.

MR. OULAHIAN: I'm sorry. I thought --

MR. BRUNING: One.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: One.

CHAIRMAN BALDWIN: The vote is 23-1-1. The amendment is adopted.

We have two other amendments, Delegate Freeman and Delegate Eichhorn.

MS. FREEMAN: I do want to --

MS. EICHHORN: I have no amendment.

CHAIRMAN BALDWIN: Do you have an amendment to Section 1, Delegate Love?

In fact we have spoken to that, Delegate Freeman, and it is my understanding that you said his was moot since they struck the remaining lines 4 through 12.

MS. FREEMAN: I move to add subsection (a) and (b) to our official legislative record so that the state will have considerations in which to guide its state responsibility. I would add also to subsection (b) hazardous nuclear waste.

CHAIRMAN BALDWIN: We have to get subsection (a) first.

MR. OULAHAN: A point of order.

CHAIRMAN BALDWIN: A point of order has been called for.

MR. OULAHAN: That has already been taken care of and policy decided. Subsections (a) and (b) are not involved here.

MS. FREEMAN: This is not reconsideration. This is a separate motion. I am moving to add the (a) and (b) to our official legislative record because otherwise there is no guidance for the state in carrying out its responsibilities --

CHAIRMAN BALDWIN: Just one second. A point of order. I don't understand what the legislation that is being -- the only thing we have is Section 1, which is one sentence, which is the public policy. "It the policy of the

State to protect, restore, and enhance the quality of the human environment for this and future generations."

MS. FREEMAN: I understand that, Mr. Chairman. What I am asking is the language which we removed from Section 1, but which was previously listed as subsections (a) and (b) not be considered as subsections (a) and (b) but, rather, go into our official legislative history. My concern is --

CHAIRMAN BALDWIN: Robert's Rules of Order wouldn't allow it. That would be out of order. Once something -- and I can refer you to Robert's Rules of Order -- once the body has taken an action, and we did in fact delete that, you can't come back and deal with that same topic again.

MS. FREEMAN: I am not moving to add it to Section 1, Mr. Chairman. I am moving it for a different --

CHAIRMAN BALDWIN: Well, we are dealing with Section 1. So whatever you are speaking to now, we haven't adopted Section 1 and that is where we are. We are still on Section 1, and any amendment or substitution or whatever would have to deal with that one sentence. As you know, Delegate Jordan came in and struck "policy," so we deleted "policy" and inserted "responsibility." Your amendment would have to deal with what we have left, and what we have

left is one sentence.

MS. FREEMAN: May I ask the Chair when it would be appropriate to clarify for the legislative record, at what point could I make a motion to clarify our legislative record?

CHAIRMAN BALDWIN: It is my understanding that to clarify the legislative record would be part of a report and not part of this -- this is the constitution we are working on, and you have to either amend, reject, modify or whatever, and you would have to be very specific as to what it is you want to change, therefore the Chair is not able to assist you in what you are saying, other than to say, as I understand it, it belongs in what is called the report that would be attached to the constitution.

You see, you would have to be very specific as to where you want it.

MS. FREEMAN: I would want it in the official report, but the problem is --

CHAIRMAN BALDWIN: Can anyone in the assembly assist Delegate Freeman?

MR. SCHRAG: A point of order.

CHAIRMAN BALDWIN: A point of order, yes.

MR. SCHRAG: Mr. Chairman, the rules of this

convention provide for amendments to be made to the constitution. There is no rule of our convention that deals with a report of this convention or anything else. We have a transcript that is being made, a verbatim transcript that will be the official record of this convention, we have various documents that will be submitted to the historian, but there is no such document of an official "legislative history" of the type that Ms. Freeman describes, and therefore it is out of order.

MS. FREEMAN: Mr. Chairman, at what point could I have an understand then what we have currently under consideration, subsection 1, what that means?

CHAIRMAN BALDWIN: I don't think I can make it any clearer to you, Delegate Freeman. If you are going to amend, you can only change --

MS. FREEMAN: I just want to know what these words mean. I want to know what "human environment" means. That is basically what I am asking. What is the definition of "human environment"?

MS. EICHHORN: A point of order, Mr. President. I move the agenda.

CHAIRMAN BALDWIN: Okay. So you would ask the committee to define -- it is not a point of order, please.

— She is asking for an interpretation --

MR. CROFT: I think I can satisfy her concerns just very simply --

CHAIRMAN BALDWIN: Just tell her what is meant by human environment, that is her question.

MR. CROFT: -- by referring her to the section in the report, the committee's report, Article, Health and the Environment, and that report gives a detailed description, line by line, definitions, et cetera.

CHAIRMAN BALDWIN: Delegate Freeman, he referred you to the report and that "human environment" has been defined in the report.

Delegate Oulahan.

MR. OULAHAN: I think I have a right to say, Mr. Chairman, that despite what Chairman Croft said, a majority of this convention has rejected the policy statements in paragraphs (a) and (b), any language to the contrary in the report made by the committee does not have any kind of legislative importance.

CHAIRMAN BALDWIN: Yes, I have ruled on that. There is nothing on the floor but Section 1, Public Policy, one sentence.

— Mr. Chairman of the committee, the floor will

entertain the adoption of your section, as amended.

MR. CROFT: Yes, Mr. Chairman, I move the adoption of Section 1, Public Policy, as amended.

MR. JACKSON: I second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 1, Public Policy, as amended. Those in favor, signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those opposed, "nay."

(A chorus of "no.")

CHAIRMAN BALDWIN: A show of hands, a division. Those in favor of adopting Section 1, Public Policy, a show of hands.

(A show of hands.)

MR. BRUNING: 21.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: 4.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: One.

CHAIRMAN BALDWIN: Section 1 is adopted.
Section 2.

MR. CROFT: Mr. Chairman, I move the adoption of

Section 2, Preservation.

MS. : I second.

CHAIRMAN BALDWIN: Is there a minority report, Mr. Chairman?

MR. CROFT: Not that I find, no.

CHAIRMAN BALDWIN: Are there amendments for Section 2? We have Delegate Schrag and Delegate Cooper. There is one amendment -- Delegate Schrag?

MR. SCHRAG: I don't have an amendment, Mr. Chairman, but I do want to speak for this section.

CHAIRMAN BALDWIN: You want to speak for the section?

MR. SCHRAG: Yes. Am I in order?

CHAIRMAN BALDWIN: Yes.

MR. SCHRAG: Mr. President, I think this is an ideal type of constitutional language. It sets forth important public values. These values are values that I think goes to this agreement and I think it is appropriate to have this kind of language and this kind of guidance in the constitution.

CHAIRMAN BALDWIN: Delegate Cooper, do you have an amendment or do you just want to speak to it?

MR. COOPER: I have no amendment.

CHAIRMAN BALDWIN: Okay. There are no amendments.
Further discussion on Section 2?

(No response)

Having heard none, those in favor of the adoption
of Section 2, signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those in opposition?

(No response)

CHAIRMAN BALDWIN: Abstension?

(No response)

CHAIRMAN BALDWIN: Section 2 is adopted.

MR. CROFT: Mr. Chairman, I move the adoption of
Section 3, Rights of Individuals.

MR. : I second it.

CHAIRMAN BALDWIN: Is there a minority report?
Does the Corn minority report speak to Section 3?

MR. CROFT: No, she doesn't come up again until --

CHAIRMAN BALDWIN: We have an amendment from
Delegate Oulahan, on Section 3.

MR. OULAHAN: Mr. Chairman, I move to strike
Section 3.

MR. : I second it.

CHAIRMAN BALDWIN: The Oulahan amendment to strike

Section 3. Discussion?

MR. OULAHIAN: Mr. Chairman, as I pointed out earlier, we are now creating a whole net full of new litigation. Not only that, but by the use of the word "rights," the second sentence does create constitutionally a cause of action by any individual against another individual and even against the state. Now, at least up to now no state can be sued without its consent, but right here in this constitution there is a provision that waives sovereign immunity without any kind of control over it or limitation.

I can see this provision being perhaps the single most important source of litigation in our state in the future, that unless we come out and assure an absolutely clean or healthful environment, then a cause of action occurs. The first condition is impossible. We don't live in a perfect world. This should be left up to the legislature which should decide what can be done effectively within the means available to the state.

Thank you.

CHAIRMAN BALDWIN: Delegate Bruning and Delegate Blount.

MR. BRUNING: I would like to speak on this, although I would like at some point for the general counsel,

when it is appropriate, to respond to that because it is obviously an interesting argument. Living in a city which is a city with a high infant mortality rate, a city that has an extremely bad pollution condition, a city that that in short is fundamentally lacking in many environmental safeguards, I as an individual would strongly like to have the right, the opportunity to a clean and healthy environment, and I would like to ability to enforce that by law, if need be. And if I may add, if that means that if I have to take the state of the District of Columbia to court, if this indeed allows it, because they have generated polluting in my neighborhood or their failing to pick up trash or they are dumping hazardous waste in my backyard, I would like very much to have that right and not to have the sovereign immunity of that state let them do anything they want to do whenever they want to do to me, irregardless of my health.

CHAIRMAN BALDWIN: The Chair would like to ask the committee and the legal counsel to react to "each person may enforce." We understand the state can enforce, but how would a person enforce? What is the intent?

MR. CROFT: What is the intent?

CHAIRMAN BALDWIN: How can it? This is just a point of information. Each person may enforce. General

counsel?

MR. CROFT: It says, "Each person may enforce these rights and duties against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law." It means, one, that a person can go in a court and sue, but it means, two, that again the legislature has the authority to say what you can sue on and what you cannot sue on. Let me make a point -- and also there is long-standing case law on this issue. In other words, there is case law on this question. It is not -- we are not dealing in the area of mystery, Delegate Oulahan.

CHAIRMAN BALDWIN: You have other constitutions that use this exact language --

MR. CROFT: Hawaii.

CHAIRMAN BALDWIN: -- that each person may enforce it, it appears this is litigation.

MR. CROFT: Hawaii uses exactly the same language.

CHAIRMAN BALDWIN: Thank you. Delegate -- the general counsel would like to respond.

MR. THOMAS: Right, I would just like to say two things. First, in direct response I guess to Mr. Oulahan who is concerned about sovereign immunity, this does seem to

give an exception or this does seem the state is consenting to be sued in this instance. However, it is checked by the last phrase, "subject to reasonable limitations and regulation as provided by law," in which the legislature could devise legislation to ease your fears.

CHAIRMAN BALDWIN: Thank you. That clears it up.

Delegate Robinson? I'm sorry, Mr. Blount was next.

MR. ROBINSON: I will be very brief. I certainly support the rights of individuals. It just seems to me this is in the wrong place. This should be in the Bill of Rights, so I will support the preamble of the Bill of Rights when it comes up but not here.

CHAIRMAN BALDWIN: Delegate Eichhorn and Jordan.

MR. BLOUNG: I question the placing of the rights of individuals in the economic development item.

MS. EICHORN: I would like to ask a question of legal counsel. My concern about this is that it appears to me that it would be possible for Councilwoman Mason to sue me for smoking --

(Applause)

And if the court or the legislature says that it is permissible to smoke in the corridor but not in the meeting room, or that it would be possible for my neighbor to sue

me, as someone on my left pointed out, because my dog has an accident in their yard rather than in my hard, and if the legislature says that is permissible once a week. The language here would require the legislature to set limits for every single possible opportunity for a law suit.

MR. THOMAS: Reasonable. Reasonable, and the court would be the final judge as to what that is.

MS. EICHHORN: I think that it is far superior to have the legislature address these issues which I agree are valid by saying law suits under these circumstances.

MR. CROFT: Can I respond to that, and I would like to --

MS. EICHHORN: May I finish what I was saying?

MR. CROFT: But I would like to respond to your point, because I think the answer is not exactly a correct answer.

MS. EICHHORN: But I would like to finish what I was saying.

CHAIRMAN BALDWIN: Delegate Croft, she addressed her question to the general counsel.

MR. CROFT: Okay.

CHAIRMAN BALDWIN: And he has responded.

MS. EICHHORN: In a number of these instances, it

seems to me that it would be appropriate legislation because legislation sets the parameters, sets the standards, sets the guidelines that are not in a general statement like this. That is why I oppose this.

CHAIRMAN BALDWIN: She asked a question and the general counsel responded to her to her satisfaction and if you don't need to respond, we have several other delegates who would like to speak.

Delegate Jordan, Delegates Schrag, Long and Cooper.

MR. JORDAN: Mr. Chairman, I have a real problem with the section and I will tell you why. A few years ago, with deference to my friends here from the school board, they wrote a policy statement that spoke to a right and a responsibility of students and I saw more emphasis placed on the responsibility of students than I saw placed on the rights of students. In fact, in some instances the rights of students were abridged in the name of students failing to meet their responsibilities.

Now we have apparently done the same thing here in Section 3, and the title would be more appropriate if it said "rights and responsibilities of individuals" in the first place. While we provide a right, we condition that right upon the individual with respect to the fact that they

in turn will not be prepared to file. I had to go upstairs to accomplish that because we are allowing individuals at that point to have a cause of action. Now, it might be funny, but there is a man in Ward 8 who has a dog and he lives in an apartment house, and his neighbors could not stop him from keeping his dog in his apartment. I am not saying this to be funny. I am saying it because it is a serious matter.

The D.C. law provides that you can have up to four mammals, anything over that you have to have a permit. The young lady down by the elevator has a couple of geese, she has some chickens and ducks. She is in violation already because she does have the right, and this is authorized for her to keep hers.

But the point I am making is that the moment that we place an article like this in our constitution, I know -- and I will yield the floor in a moment -- a few years ago I had a couple of sheep myself, so --

(Laughter)

So I had an ewe and a little ram. The point I make though is that individuals might see that as my failing to meet my responsibility to keep a clean and healthful environment and might sue me. The point I am trying to make is that I support a principle that says -- or a concept that

says citizens have a right to a clean and healthful environment, but I don't like the idea of saying that citizens have a responsibility to do this and if they don't they are subject to suit.

Now, the question of the lady about how the state can pass laws, as placed against the state. I wonder about me or you or any other individual here is going to have to pay once we step across that very thin line of separation, our rights from our responsibility. Thank you very much.

CHAIRMAN BALDWIN: Delegates Schrag and Long and Cooper.

MR. SCHRAG: I suppose it is not unusual for lawyers to disagree and not particularly unusual for lawyers from Ward 3 to disagree, but I must disagree with my fellow Delegate Oulahan's suggestion that there is something unusual or remarkable or very strange of far out about this provision.

In fact, the background law of the country, the law of nuisance provides a type of common law remedy in the courts for people to sue their neighbors or other people for creating environmental problems. The law of nuisance is not entirely adequate to the 1930's, having been fashioned in a much earlier era. And I think it is the intention of the committee in drafting this language to give a little push, a

slight push, a little encouragement to the courts to develop that law to the point where it is more appropriate to the modern era.

At the same time, the committee has quite wisely provided that should the courts get out of control and go overboard in providing environmental protection and should the public go overboard and have too many law suits, the legislature has the ultimate right to cut back on this development by providing reasonable limitations and regulations by law, and thus the people at-large have the ultimate say. And I should remind the body that there is the right of initiative and referendum with respect to such laws as well, given what we have done in this constitutional body, so that the ultimate protection lies with the public here.

Therefore, I think it is a relatively well drafted and careful protection while at the same time giving impetus to environmental values.

CHAIRMAN BALDWIN: Delegate Long, Cooper and Love.

MR. LONG: This section may be quite logical and supportable in law, but what we are doing is we are writing a constitution which has to be accepted by the population here and the Congress of the United States. We know that D.C. is the place for making cheap shots by every lunatic

fringe group that wants to take a crack at something.

Just the word "rights" and "environment" put together is going to make a beautiful target. If the common law is quite sufficient to handle this kind of a situation, there is no sense in waving a red flag for the anti-environment groups to come and try to knock it down. I think it is unnecessary and we can well do without without any detriment to the real environmental concerns of the community. So I ask you to support the motion to strike.

CHAIRMAN BALDWIN: Delegate Cooper.

MR. COOPER: I too would like to speak in support of the motion to strike this. And I would also like to add, although Delegate Blount is here, that his idea to have this section moved completely from here and included in the Bill of Rights was set forth in this committee, you had better believe it, but they disposed of that real fast.

I do have sympathy for Delegate Bruning's need and want to secure his environment and not have environmental waste dumped in his backyard or a puff of smoke in his face every time he walks his front or backdoor. However, I think our general counsel has alerted us to a much larger issue, and that is that this article that is entitled "Rights of Individuals" would in fact be consent to be sued, and I think

that is the issue we have to grapple with here. Do we want to allow the public to be able to sue the state, especially over something as trivial as environmental, a slight environmental -- which is not yet a right, but I will use that term loosely -- a slight environmental right being infringed upon?

We don't even have any determination as to the degree of infringement with regard to what is an environmental right. So I think that we ought to give this section very serious consideration and then we ought to vote it down after that consideration based upon its lack of merit.

CHAIRMAN BALDWIN: You will be called upon in this order: Love, Brian Moore, Coates, Jones, Talmadge Moore, Holmes, Kameny and Johnson.

Delegate Love.

MR. LOVE: Mr. Chairman, in my neighborhood we have a problem with waste from dogs and cats and is a problem of major concern. I am sure that many people want to speak to this article.

I have heard our counsel, our constitutional lawyer tell us there is nothing unusual about this, that it allows the legislature to make the laws. It is perfectly reasonable. It also appears to me that there is no use having laws, if those laws are broken and you can't do something

about it. This allows you as an individual to do something about it.

As I hear the argument against this article, I have heard the right to keep goats in the yard next to yours, which I would oppose as not legal, the right to blow smoke and put out cigarettes on the floor, which we see here every night and watch -- it sounds to me like a very good section and, as we have been told, it does not seem to open a pandora's box. I think the people in this hall are worried about suing the state, then somebody should move to delete the section that says "the public" and then we will be back to being able to at least sue our neighbors and dog owners and cigarette smokers so that they obey the laws.

Thank you.

CHAIRMAN BALDWIN: Brian Moore.

MR. B. MOORE: Thank you, Mr. President, It appears to me that we have erred in defining "person" as simply being my neighbor. The committee understands "a person" includes more than that person who lives on my block, but includes corporations and other entities which are specified in the definition of that term. So the committee is concerned with a much larger problem.

For example, if you happen to live in the section

of the city where Delegate Teresa Jones lives, you would understand how stifling it is to have the perfumes from solid waste processing wafted across southeast Washington from the Blue Plains Sewage Treatment Plant. In recent years when I sat in the office of city council person, we heard the complaints about incinerators, the Fort Totten Incinerator and others which posed impairment of environment across this city.

There are persons who live near 14th and Emerson where Metro runs the engines of its diesels all night and who find that the environment is polluted by exhaust fumes from the combustion of diesel engines. These are problems which under the section provided in the committee's report provide a cause for action. I don't know what Delegate Oulahan finds so obnoxious about a cause of action in our area and across this land. Recent discussions indicate that those who find cause of action most obnoxious in this area are the owners of industry, and we have seen recently on the federal level an attempt by the Reagan administration to roll back certain advances achieved after long, arduous, diligent work by such organizations as those of Ralph Nader and others of anti-pollution devices required on automobiles is a case in point, the burning of coals which pollute the

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